

Applicant: Henderson et al.
Application Serial No.: 09/994,551
Filing Date: November 27, 2001
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REMARKS

Reconsideration of the application is respectfully requested.

Claims 1, 2, 4, 12, 13, 18-20, 57 and 58 are in the application.

At the onset, the undersigned would like to thank the Examiner for courtesies extended during a personal interview conducted on February 14, 2006. The substance of that interview is generally set forth below.

In the Official Action, the Examiner rejected claim 58 under 35 U.S.C. §103(a) as being allegedly unpatentable over Gianotti (U.S. Patent No. 5,993,483) in view of Popadiuk et al. (U.S. Patent No. 5,556,426). The Examiner admitted that Gianotti "fails to disclose specifically that the tubular body has a first end having a flow area larger than the flow area of the second end." To overcome this deficiency, the Examiner stated that "Popadiuk discloses that the conduit may be a tapered graft; therefore, the graft will inherently have one end larger than the other end." Further, the Examiner asserted that "it would have been an obvious matter of design choice to make the tubular body of Gianotti tapered and have one end larger than the other as taught by Popadiuk."

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The Examiner's assertions are respectfully traversed.

Gianotti is directed to a stent having a "flexible self-expanding braided tubular wall being composed of helically wound wires and having proximal and distal ends." Column 1, lines 8-10. The wires are metallic. Column 4, lines 33-35; column 4, lines 52-57. With the hypothetical combination suggested by the Examiner of Popadiuk et al. and Gianotti, the Gianotti stent would be modified to have one end larger than the other end.

Claim 58 is directed to an "arterio-venous shunt graft." As discussed at page 1 of Applicants' Specification, an arterio-venous shunt graft needs to be a blood-conveying tube which can shunt blood between an artery and a vein and which can be repeatedly punctured by a hemodialysis needle. The Gianotti stent does not satisfy either requirement. First, it is a porous structure, due to its braided configuration. Second, the metallic wire inhibits the ability to puncture the structure with a hemodialysis needle. As set forth in MPEP §2111.02(II),

During examination, statements in the preamble reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the recited purpose or intended use results in a structural difference (or, in the case of process claims, manipulative difference) between the claimed invention and the prior art. If so, the recitation serves to limit the claim.... If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim.

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As noted above, the modified Gianotti structure cannot serve the intended use of being an arterio-venous shunt graft. As such, the hypothetical combination suggested by the Examiner does not meet all of the claim limitations of claim 58. It is respectfully submitted that claim 58 is patentable over Gianotti and Popadiuk et al., each taken alone or in combination.

The Examiner rejected claims 1, 2, 4, 12, 13 and 18-20 under 35 U.S.C. §103(a) as being allegedly unpatentable over Gianotti in view of Martakos et al. (U.S. Patent No. 6,416,537).

The Examiner admitted that Gianotti "fails to disclose specifically that the tubular body has a tubular sleeve and that the device is made of PTFE." The Examiner asserted that it would have been obvious "to modify the device of Gianotti to be made of PTFE" and that it would have been "obvious to modify the device of Gianotti to have a tubular sleeve portion as taught by Martakos."

With reference to Gianotti, Gianotti discloses various patterns of elevations 7 where one or more impressions or bulges are formed in the stent wall. Column 2, lines 36-39; column 4, lines 45-49. The elevations provide stability to the meshes of the braided tubular wall and lessen the tendency of the wires to debraid. Column 4, lines 59-64; column 5, lines 9-16.

Claim 1 is directed to an arterio-venous shunt graft comprising "a tubular body having an interior surface and an exterior surface, a plurality of ribs extending from said exterior surface."

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With the hypothetical combination of Gianotti and Martakos et al. suggested by the Examiner, the Gianotti device would be formed as a continuous tube with elevations. However, there is no motivation or suggestion to form the hypothetical combination suggested by the Examiner. In particular, the elevations disclosed in Gianotti are specifically for a braided wire configuration. There is no suggestion to use the elevations in a continuous wall structure, such as a PTFE tube. Moreover, there is no disclosure or suggestion to form the Gianotti structure out of PTFE or with a sleeve, since either modification would completely alter the base structure. See, MPEP §2143.01(V) ("If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification."). As such, it is respectfully submitted that Gianotti and Martakos et al. cannot be combined as suggested by the Examiner. It is respectfully submitted that claims 1, 2, 4, 12, 13, and 18-20 are patentable over Gianotti and Martakos et al., each taken alone or in combination.

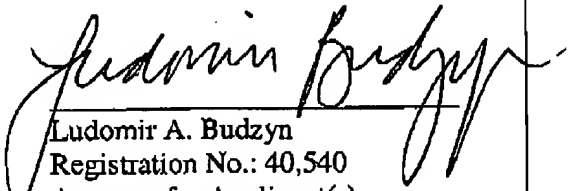
The Examiner rejected claim 57 under 35 U.S.C. §103(a) as being allegedly unpatentable over Gianotti in view of Martakos et al. and further in view of Popadiuk et al. The Examiner admitted that the combination of Gianotti and Martakos et al. "fails to disclose specifically that the tubular body has a first end having a flow area larger than the flow area of the second end." The Examiner relied upon Popadiuk et al. for allegedly overcoming this deficiency.

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Claim 57 depends from claim 1. It is respectfully submitted that Popadiuk et al. does not overcome the deficiencies of Gianotti and Martakos et al. noted above. As such, it is respectfully submitted that claim 57 is also patentable.

Favorable action is earnestly solicited. If there are any questions or if additional information is required, the Examiner is respectfully requested to contact Applicants' attorney at the telephone number listed below.

Respectfully submitted,


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